

### § 6.—*Accidental trespass.*

It should be remarked that cattle ought not to be seized for trespass, nor a herdsman or driver prosecuted, when the cattle have got into a forest by accident, or notwithstanding reasonable efforts to prevent it, nor when they have taken refuge there from a storm<sup>7</sup>.

The Hazára Regulation (II of 1879), section 31, contains a provision that if cattle stray off a lawfully used road, without negligence on the part of the driver, they are not liable<sup>8</sup>.

## SECTION IV.—(d) CONTROL OF TIMBER IN TRANSIT AND OFFENCES CONNECTED WITH IT.

The third class of offences dealt with in the Forest Act, consists of offences against timber in transit.

### § 1.—*General Object of the control.*

I may recall to the student's mind, but without repeating them, the remarks which I made at the outset, in explanation of the reason why we were not content with protecting the forest itself, but followed its produce in transit.

Two objects were in view, one, the prevention of theft of timber from the public forests, the other the protection of honest timber traders, whose timber rafted on rivers or floating in single logs and already liable to all the natural accidents of river transit, to loss by flood, and breaking up of rafts, to being stranded 'neeped,' and so forth, is further exposed to more than usual risks from timber thieves and by them to be supermarked, or concealed, cut up, and made away with.

In India, both water and land transport are practised; in some provinces only the latter, but in many both. Consequently, the law has to provide for the control in transit under two widely different conditions.

<sup>7</sup> Compare the Austrian law of 1852, art. 66: but any damage done must be made good.

<sup>8</sup> There is a similar rule in the Saxon law (see Qvenzel, p. 192.)

Both circumstances of transit are, however, included in Chapter VIII (Burma Act, chapter VI).

For the Indian provinces, section 41 provides that the control of *all* timber (which term includes bamboos, dug-out canoes or timber fashioned), and *all* forest produce<sup>1</sup> in transit by land as well as by water is vested in the local Government. In Burma, it has been thought sufficient to control the transit of timber only (section 43) : timber includes bamboos.

Such a wide power needs, of course, to be exercised with great discretion ; on the other hand, it is absolutely necessary to leave it wide, since no exception is practicable without virtually destroying the provision itself. If some persons could under any pretence, or colour of legal exception, get some defined class of forest produce exempted from the control imposed by the Act, it would be like a small hole in a large cistern, which would effectually prevent its retaining any water whatever. The Government forest would be gradually robbed, and the stolen produce be safely passed out, under

<sup>1</sup> A slight awkwardness may arise here. 'Timber' can be controlled, no matter where it comes from ; it may be cut in a field or a private forest or anywhere ; the term involves no question as to the place of origin. But the various articles included by definition under the term "forest produce" must come *from a forest*, so that it may sometimes be a question whether the land from which a given batch of produce stopped for examination came, was a "forest" or not. If it was, the produce comes under the section : if not, it is free and cannot be subjected to control. Now the term "forest" has no special or legal meaning assigned to it in the Act. It is, therefore, a question of fact and of the ordinary use of terms. If the material came from a reserved forest, a village forest, or even a tract of forest land under protection, no one would think of raising a doubt that the place was a forest, but in other cases it might be a question whether, within the ordinary meaning of the term, the place of origin was "a forest" or not. Practically, the possibility of such a question does not give ground for apprehending any difficulty. In the case of water-transit this is especially the case, because timber (and bamboos are included) is the chief if not the only thing controlled.

If any considerable traffic existed, or came to exist, in any locality, and it became desirable to place beyond question the power of checking the transit of boat loads of fibre, or thatching-grass, wood-oil, myrabolans, or any other article besides timber, an amendment could easily be made, by adding to the definition of "forest produce" words to say that the term also included 'any specified articles of the kinds mentioned, irrespective of their place of origin, when such articles were by rules made under section 41, declared to be subject to control in transit.'

the pretence that the loads were not liable to stoppage since there is not (as a rule) any external or immediately recognisable indication that timber or other material has come from one forest or another. In the same way, owners of forest produce would get it stolen and safely conveyed away without risk of detection, if only a loophole for escape were provided on the ground that the Act did not apply to *them*. But the safeguards against abuse are ample.

(1).—The control itself is not of an irksome or burdensome character.

(2).—The exact local circumstances can be taken into account, since the precise *extent* of control is not laid down in the Act, but is dependent on rules to be made under section 41, and Government, as the guardian of the public rights, and of the safety and comfort of the people, would not allow rules to be made which could be really oppressive<sup>2</sup>.

### § 2.—*Transit by land.*

The control of transit by land is effected under rules devoted to the following points—

(1) The transit may be confined to certain lines or routes, and the use of others, may consequently be prohibited.

This provision, as it stands in the Act, applies both to transit by land and water, although here I am considering that these two kinds of transit are for convenience separated. In the case of rivers, or rivers which have several branches, it is easy to apply such a provision and prevent floating of logs on other streams. But by land it is obviously a question of the local configuration of the country, whether such a provision can be applied. In some places the export lines will be few and no others will be practicable; in others, besides main roads, there may be other bypaths, or even the possibility of traversing the open country at any point. Here

<sup>2</sup> Under the Indian Act rules under section 41 require the sanction of the Government of India,—a further safeguard which, however, is not at all necessary. The provision has been omitted in the Burma Act.

without the (altogether impracticable) aid of a hedge, or a cordon of forest guards, it would be impossible to apply such a provision<sup>3</sup>. When, however, circumstances render the rule desirable and applicable, the export or other "moving" of timber, &c., on unauthorised routes would be illicit and constitute a forest offence.

(2) The rules may require that all produce in transit shall be covered by a "pass."

This pass will be conditional that the produce is to stop and be examined at certain convenient depôts or timber stations, otherwise of course the pass would be of no use, since the material actually in the cart, or cattle load, might not in the least correspond to it<sup>4</sup>. Fees may be prescribed for the passes, and are usually of small amount sufficient to cover the cost of printing the forms, and the pay of timber station establishments. Such fees are prescribed in the rule itself, by the local Government. Under some systems, the passes are paid for at higher rates, in which case the fee represents the royalty or a price of the produce taken from the forest in virtue of the pass, which operates as a 'permit' to go into the forest and collect, cut, or take what the pass specifies, the produce being checked on leaving the forest by comparing it with the pass on reaching an examination post<sup>5</sup>.

<sup>3</sup> In such cases the best plan would probably be to say nothing about prescribing routes, but merely (under section 41e) to provide for the establishment of depôts for the examination of timber and produce on the most important and commonly used lines. If then people avoided them and found out an alternative line, it would be easy to establish another depôt or set of depôts on that, and so on till all the really and important routes were occupied, which, under the circumstances, is as much as it is possible to do.

<sup>4</sup> It should be borne in mind that in practice this passage of material along certain routes, with pass in hand, soon becomes a matter of well-understood practice and gives no more trouble than getting a railway ticket and selecting the proper line and the right carriage does on an ordinary journey. Exporters of forest produce are always 'habitués'; they understand the routine, and if they are only honest and do not attempt to smuggle or conceal illicitly obtained produce, they are not really troubled by it in the least.

<sup>5</sup> Called "náka" and by other local names.

This system is common in the lower hill forests of the North-Western Provinces, in the Central Provinces hills, and in the Melghát of Berar.

It is easy to see that the evasion of any rule as to getting a pass, producing it, giving it up when done with, and so forth, becomes a forest offence and is liable to punishment.

### § 3.—*Transit by water.*

Transit by water is regulated also by rules (usually called "River Rules") made pursuant to section 41 (B 43). In the Panjáb and in British Burma, this is by far the most important means of transport; but it is also of great importance in parts of Bengal (Chittagong for example), in Assam, and in the North-Western Provinces, as regards the produce of the Himalayan forests, and in Oudh. It involves a much more numerous set of rules, as there are many subsidiary points to be provided for.

The Government is vested by law with the control of rivers<sup>6</sup> and their banks, as far as the transport of timber and forest produce is concerned. (For the sake of brevity I shall hereafter speak of 'timber' only—that is the principal article: the transport of other produce, except wood, bamboos, firewood and hollowed-out or fashioned timber, being hardly cared for at all (see note at page 295, *ante*.)

### § 4.—*Control of the Banks of Rivers.*

It will be observed that this section does not claim any special right of property in the banks or any interest in or over the soil; any such right or interest may or may not exist according to the ordinary law of land tenure and interests in land. A riparian owner may prevent timber being hauled up on his land or may have a prescriptive right to levy fees for timber so landed: with that the Act has nothing to do. But the Government officers have the control of the timber, and may prevent it being stored so

<sup>6</sup> "River" includes creeks, canals, streams, and generally all water-channels, natural or artificial. (Definition.)

as to interfere with the passage of other rafts and so forth; and may examine the timber (if the rules so require) or otherwise deal with it. The fact of the banks of the river being private property does not give the proprietor or any one else any 'sanctuary' against the control of the river officer.

In the same way, where power is given by rule (section 41f) (B. 43 j) to prevent obstructions of the banks, this will be understood to refer to the actual navigating way and to interference with the customary and lawful use of the river and its banks as a public highway, not to any special interference with the proprietary rights of riparian owners.

The general power given by the section to make rules against obstructions in the river, is a very necessary one. Such obstruction is, however, most likely to occur in narrow creeks or arms, and especially in the upper branches and feeders of rivers, where sometimes the falling of a tree across them, or the throwing in of a mass of "toungyá refuse"—bamboos, vegetation and smaller trees from land cleared for cultivation—may prevent the floating of logs, and may cause a "jam" or barrier of logs to be formed, which may be not only very troublesome and even dangerous, but also very expensive to clear.

In nearly all rivers used for floating, logs put into the upper part or into streams and side-feeders, have to be put in singly when they float of their own accord until they reach a broader part of the river when they can be brought under control and formed into rafts. Anything therefore which obstructs the free passage of such logs, is a serious nuisance.

#### § 5.—*Lines of transit and Timber Stations.*

The same power which has been noticed under the head of land transport, to fix certain routes and confine the transport to them, may also be applied in the case of rivers<sup>7</sup>. And here also the

<sup>7</sup> This power may be especially needed where the river divides into several channels, and which ultimately lead down to the same place. Those familiar with the Kado Rules (British Burma) will at once recognize the illustration of this which those rules afford.

system of appointing certain 'depôts' or "timber stations," and requiring the timber to be covered by "passes" which are produced, and checked when the timber reaches those stations, finds its most useful application.

In some cases these timber stations at or near the great timber markets, forming as it were the 'termini' of river transit, are of great importance. At Kado, near Moulmein, in British Burma, a timber station of this kind exists, in which thousands of logs of teak and other woods are landed. And as it is arranged for the convenience of traders, that logs may be kept stored there for a time, a complete set of subsidiary rules for the management of the station is provided<sup>a</sup>.

#### § 6.—*Prevention of Timber Piracy.*

Another very important feature in the business of controlling timber in transit is alluded to in section 41½ (B. 43 l.). This is the prevention of timber piracy. The presence of a number of logs floating about in a stream and often getting stranded for a time when the water level falls, or getting into a backwater; or the fact that a raft has been left at night moored against a bank and may easily be set adrift, these circumstances and many others make river-timber a tempting subject for thieves and dishonest traders in timber.

Either the log can be got out of the river, concealed for a time in the sand or in the long grass that so often fringes the river bank, and then sawn up and made away with; or the mark can be burned out (in which case the mark of fire is easily attributed to the action of jungle fires in the forest), or it can be cut out, the grain being artificially restored; or a mark can be altered so that when the log reaches a depôt it is claimed by the holder of the new mark, and the true owner loses his property, supposing it to have gone adrift, or perhaps to have sunk.

<sup>a</sup> Section 41i. (Burma Act, Section 43½.)

The rules therefore have to aim at diminishing the facility with which timber can be quickly disposed of by sawing, and hence it is made lawful to regulate, or wholly prevent within certain limits, the establishment of sawpits in localities where it is known that timber is, or easily can be, landed and cut up so that it can no longer be identified.

This provision is chiefly requisite in connection with river transit, but the rules could equally be applied to the establishment of sawpits anywhere where there is the same risk of facilitating timber theft, and they might be applied for example to prohibit sawpits being set up in the vicinity of a forest<sup>9</sup>.

Tending to the same object as the regulation of sawpits are also rules which may be made, prohibiting and rendering penal the sawing-up (anywhere), the burning and concealing<sup>10</sup> of timber without proper leave or authority.

### § 7.—*Marking Hammers.*

Then again there is the risk of tampering with the property marks on timber to which I have alluded. The rules may meet this form of river piracy, by making it penal to possess or carry

<sup>9</sup> The French law has similar, and indeed stricter provisions. (See Code Forest: Art. 154, 155, and Curasson, II, p. 19-22, and *Pulon*, p. 215.) These indeed existed originally in the Law of 1669. No sawpit (without machinery), Art. 154, or Mill or establishment for sawing (*usine à scier*) Art. 155, can be set up without special authority of the "Government" (since officially interpreted to mean the order of the *Prefet*) on the borders (*enceinte*) of a forest, or within two kilometres distant from it. This rule does not apply to establishments forming part of regular towns or villages, which may happen to lie within the proscribed distance; but in such cases (as in any case where a "*usine*" is specially authorised) the timber conveyed into the factory or its yards must be "passed" and marked by a Forest Officer (Art. 158). The Italian law also regulates the establishment of such places ("*magazines and dépôts for timber and workshops (opifici) for cutting up and converting timber*") by Art. 45 of the law of June 1877. The Prussian law (*Eding*, p. 185) allows also the restriction of sawpits.

<sup>10</sup> This of course can only be done with a dishonest intention. What motive otherwise has a man for burying a log in the sand or covering it with a pile of thatching grass?



marking hammers or tools for altering marks<sup>1</sup>, except under certain conditions<sup>2</sup>.

### § 8.—*Registration of marks.*

Such rules could not, however, work, unless supplemented by a system of *registering* timber marks: this ensures it being known what mark really indicates the property of one man or another.

For the expense and trouble of such registration, *fees* are charged; and thus the tendency to register more than one mark is checked, while at the same time men of straw are deterred from registering marks, having no timber really, but hoping to steal some from time to time and put their mark on it<sup>3</sup>.

Disputes at law are avoided, since the certificate is evidence that such and such a mark really belongs to such a person and indicates his ownership. Moreover, confusion is avoided since the registering officer will refuse to allow a private person to register a mark already registered in favour of another person, or in use by Government officers for Government timber, or which is so like some one else's mark that a few cuts of a chisel or other implement will readily convert one mark into the other.

The registration also diminishes the facilities for using false marks. Supposing, for example, that a timber thief has *en route* cut out the marks on several logs and supermarked them with a

<sup>1</sup> In Burma, they use (among other implements) small combs of metal so that when the original marks have been pared off the surface of the log, the striated appearance or grain of the log may be restored by drawing the metal teeth over the smooth surface of the cut, and then applying a new hammer-mark.

<sup>2</sup> Nor is there any hardship in this. No forest-timber owner can require to wander about the banks of a river with a marking hammer, still less with tools of which the very reason of existence is a dishonest purpose. The proper marks indicating property are necessarily put into the logs in the forest before launching, or on forming the timber into rafts, where the work is done specially and under supervision. If a trader has (exceptionally) reason to fear that a number of his logs have got adrift unmarked, so that he needs to follow them and mark *en route*, he must explain the special circumstances to a Forest Officer and justify the issue of a written permission to him to mark in transit.

<sup>3</sup> For at the time of registration, if such a person were suspected, enquiry might be ordered as to whether he really had timber, and if not, registration might be refused.

spurious hammer, it would be found on reaching depôts that the logs bore a mark not to be found in the register, and such logs would be at once detained and delivery refused.

This, it is true, would not prevent a trader who had registered his mark cutting off another man's mark and putting on his own, but to prevent such offences, the heavy penalty for tampering with marks, or the vigilance of the forest staff as River Police, must be relied on.

The student will perceive that in all these cases the infringement of the rules involves either wilful evasion, for which there is no excuse, or fraud in some shape: therefore the law attaches to the offences the liability to double punishment in the case of second conviction, or if the offence is done at night or after preparation for resistance.

#### § 9.—*Special provisions regarding liability.*

To this chapter of the Forest Act certain provisions are attached, the object of which is that Government should be saved from liability for loss of timber in case a flood or other accident causes damage, while the timber is necessarily (or for the owner's convenience as it may be in some cases) stored at or detained at a timber station. (Section 43, and so in the Burma Act also). At the same time such loss may often be prevented if timely assistance can be procured, and so a further section (section 44) gives power to Police and Forest Officers to require the aid of certain persons in these cases. A person refusing to help would be liable to punishment under section 187 of the Indian Penal Code, therefore it is only necessary to impose the duty, but not to specify a penalty, in the Forest Act.

#### DRIFT TIMBER AND SALVING.

#### § 10.—*General Object of the Rules.*

There is another branch of the subject of "timber in transit" to which the Forest Act devotes a separate chapter. I allude to the subject of drift timber.

Ordinarily speaking, timber in transit is under control while it is going along with some one in charge of the raft or in the boat to which it is attached. But timber may get *out of* control and go adrift. It often happens that from the effect of a sudden rising of the river, or from some other accidental cause, rafts get broken up ; they strike a bank or an island and go to pieces, and thus the single logs float away without control, or, being deprived of the support of bamboos or lighter logs to which they are attached, sink in the water either at once, or after a time when they have become water-logged. Sometimes they get stranded on islands, and the water subsides and leaves them out of reach, or they may get caught in 'snags' in the river bed.

In many rivers the logs are at first launched singly and left to take their chance till they reach some point where the river debouches on to the plains and becomes a steady flowing river. At this point then the logs can be caught and formed into rafts. Above this point we do not speak of timber as being "drift" or waiting to be "salved," because in the first place the precipitous banks and torrential character of the stream make interference with the timber impossible, except at a few points, at which a look-out can be kept. Moreover, the upper portion of the river is usually entirely in the control of the Forest Officer ; no traders or others can get there without his permission.

But it will often happen, too, that when the logs reach the catching-places, some of them will, in spite of all care, go past them, and then they escape control and become drift, so as to require protection under the rules. As logs so stranded or left floating without control, if marked, can ultimately be recovered and their owners found, if *some one* undertakes the charge of them meanwhile, it is obviously necessary that rules should be made to protect such property from being made away with, or from being further carried away perhaps out to sea, and lost.

Moreover, all logs that are *not* marked and so become unidentifiable or "waif," are by the law of the land, the property of *some*

one, whether the "Lord of the Manor," the Crown, or some one else, it is equally desirable that these should not be left to waste and destruction. Hence under the Forest Act, the Government assumes the *primâ facie* right of property in all unmarked timber in certain limits, and a right to *collect* and *manage* all *drift* timber, whether marked or not, and the law provides a procedure, by which the collection of such timber is regulated; and by which its ultimate disposal is arranged for.

### § 11.—*The Law of Waif.*

Although in British territory the Government may, under section 45, declare the *primâ facie* rights of the State to unmarked timber in certain limits, it is nevertheless necessary to understand what is meant by waif, for the right of the British Government to claim waif on its own shores is derived from the right of the former Native Governments. It seems to have been a long standing and well-understood custom among the Native States in the old days that the Ruler is entitled to the waif timber within his boundaries; but this did not prevent the customary appropriation of scraps and fragments of smaller value. Consequently, though the British Government has succeeded to this right in its own territory, the Native States that have river frontage still retain it in their own territories: and as in some provinces, and notably in the Panjâb, many of the rivers which are the regular routes for timber transit are so situated that one or both of the banks lie in foreign territory, for some part of the river course, it is important to understand what "waif" timber, which either Government is entitled to claim, really is.

"Waif" depends on the principle which I alluded to in the Chapter on Property. Logs become waif when every one "waives" a claim to them because individual ownership cannot be established<sup>4</sup>

<sup>4</sup> Originally in the barbarous low Latin of the time "*bona waiviata*" were goods abandoned, "waived" or thrown away in flight by a thief who was pursued. Where the owner of such goods was not traceable, they became the right of the Crown, or by grant of the Crown, of the Lord of the Manor.

In the Panjáb, the Ruler of the State whose territory forms the bank, is entitled to the waif, and I have little doubt that the same rule would be held in other provinces.

Several of the Panjáb rivers run through foreign territory, as I said, or have one of their banks foreign. On the Sutlej the Panjáb Government, as the paramount power over the Protected States, laid down (in 1871) the true rule on the subject. It is not the mere absence of a device, or mark in that sense, that makes a log "waif." For example, on the Sutlej it is believed (and this of course is a question of fact) that from no forests but Government forests, could timber in *log* get into the river at all. Consequently all logs, even though they have no Government mark or device, are identified as Government property (especially this is the case with logs cut by the cross-cut saw,) and they are not 'waif' and cannot be claimed by the Chief on whose shore they may happen to be stranded, or within whose boundary they may happen to float.

I presume the same principle would hold good if there were certain forests only of certain kinds of wood, and it was known who owned those forests: logs of this kind of wood would never be held to be waif or unidentifiable.

It is true that on the Sutlej unmarked logs showing root-ends or being broken, not cut, and apparently the result, not of forest fellings but of storms or other accident, are allowed to be waif. Such logs are spoken of as "windfall." In these cases the chiefs are allowed to take the logs as waif<sup>b</sup>, but this is rather a matter of concession than of strict principle. They are given up because, though the wood may be the property of Government, they have

<sup>b</sup> The question is sometimes asked, must waif be wood actually cast upon a shore or island, or may the States entitled to waif send out men on floats, &c., to swim after and catch waif logs? There can be no doubt that waif depends on the condition of the log, not on the fact of its being in the water or on dry land. As long as the collection of such waif is made *within the boundary of the State*, that is the only question that can be raised. The boundary may be in the middle of the stream.

not been appropriated or prepared at the expense of Government, and Government do not wish to press the principle of identification too far.

Government claims all waif on its own shores, but usually allows people to take smaller bits for their own use; the limit being what one man can himself lift or carry away without assistance, and *sawn timber being not included* in the permission (or obviously many metre-gauge sleepers and other such small scantling would be carried off).

Under section 45, Government is empowered to exempt any class of timber from its general declaration of *prima facie* property.

It will probably be asked why the Government should confine its right, to 'waif' within 'certain limits' (by section 45). The answer is, that as regards timber, waif by custom arises in connection with rivers and their banks, but in India river banks are very uncertain things: since, in time of high flood, logs may be taken far inland, and when the water subsides may be left three or four miles or more from the edge of the water. The Government therefore will desire to put a reasonable limit to the area within which it will claim to interfere with waif logs. It is usual under this section to notify the chief rivers under control down to a certain point in their courses, and to specify a certain distance on either side of the water line at its cold-weather level.

#### § 12.—*Rules regarding Drift and its disposal.*

Chapter IX of the Forest Act (B. Chapter VII), regulates the collection of drift timber in the first instance, and provides the procedure for its disposal when it is collected. It is customary to speak of "salving" timber when it is adrift without control and floating on its way to the sea where it is almost sure to be lost.

In some cases it may be convenient for Government officers only, to undertake the work: but in most cases it would be a pity that private persons who see logs going past should not be allowed to stop or save them, and get a reward, provided precautions are

taken that misappropriation is not encouraged under the name of salving.

All this is provided for by rules made under section 51 (B section 51)<sup>6</sup>.

It will depend on the rules whether any given individual is or is not justified in salving timber. For it must be remembered that, as a general rule<sup>7</sup>, it is no offence in a person to take charge of apparently ownerless property, with the *bona fide* intention of securing it and restoring it to the owner: this, however, may be affected by the existence of rules having the force of law, which, in certain cases, prescribe that only certain licensed or authorised persons should interfere with it.

It will be borne in mind that drift timber is still "in transit," and therefore any cutting off of marks, burying, concealing, &c., is punishable as an offence against the rules previously described as made under section 41 (or in some cases against the Forest Act, section 62, or the Indian Penal Code).

Under whatever plan the drift timber is secured, it has to be determined what is to be done with it when salvaged. This will depend on circumstances. If the logs are salvaged in the water, they are easily taken in tow by a boat or rafted up to a *drift-timber station* or *dépôt* appointed by the (properly authorized) forest officer under section 45. But there are many cases where this cannot be done.

The section therefore says that timber "*may*" be brought to such *dépôts*. There are cases where floods have left large heavy logs far inland; or where single logs, of perhaps great weight or size, have

<sup>6</sup> "I would advise students to procure the rules in force on the Salween in Burma as a good illustration of the practical drafting of rules about salving. If the present practice is maintained, it will be found that there is a certain part of the river where any one may salvage, provided he takes out a licence, registers the mark he uses to denote that logs are of his salvaging, &c. At another part salvaging is only done by authorized "Government salvagers," or the collection is undertaken by official agency.

In Burma, steamers often pick up valuable logs and take them in tow. They then give them up at a drift timber station, and receive the salvage reward.

<sup>7</sup> Indian Penal Code, Section 403, Explanation II.

been carried singly or together below the lowest timber stations, so that it would be inconvenient or costly to do more than secure the timber in some safe place. The rules under section 51 will arrange this, so that the salver may be bound to give notice to the Forest Officer; indeed in any case a landowner on whose land a log was washed would run the risk of being charged with misappropriating the timber<sup>8</sup> if he did not make an attempt to find out the owner or give him the chance of recovering his property. The rules also would enable the logs lying singly where they are, to be treated just as if they had been taken to a drift timber station, and the same procedure regarding claims, &c., to be observed.

### § 13.—*Disposal of Timber.*

When the timber is brought to a station, or is deposited, as just described, the further procedure is so clearly laid down in the Forest Act that explanatory comment is not necessary. Only I may mention, with reference to the right of Government to unidentified timber in the last resort, that claimants should be allowed every chance of identifying their property before it is finally taken possession of as 'waif.'

### § 14.—*Protection while awaiting disposal.*

Timber while it is awaiting the decision which makes it over to some claimant, or while it is retained pending the settlement in a court of law of a dispute between rival claimants, is not liable to any seizure or process of a civil, criminal, or revenue court<sup>9</sup> till it has gone through the legal procedure under this chapter. (Section 47 (B), section 48). This obviates the chance of a collision

<sup>8</sup> See section 403, I. P. C., and explanations. It is quite possible to commit the offence of criminal misappropriation for a time only; whence the necessity of communicating with the proper official. Of course it would be a question of fact whether a person had kept the timber so long or under such circumstances, that misappropriation could be concluded.

<sup>9</sup> In the Burma Act the Civil Court only is mentioned, because practically that is all that is required; no Revenue Court will practically require to attach timber, and if a Criminal Court does, it will be in connection with some offence; and under such circumstances, that there is no object in excepting it.



of authority<sup>10</sup>. After the forest procedure is complete, there is nothing to prevent any Court issuing its order or injunction, or taking the timber under its own process.

### § 15.—*Effect of Forest Officer's decision.*

In deciding claims it will be observed, the forest officer makes the timber over to the person he thinks best entitled. This, of course, has no effect whatever, as a binding decision that such person is really the owner<sup>1</sup>. Any other person might go to law and pursue the usual course and claim against the person who got delivery on the *prima facie* evidence of his title.

If the Forest Officer cannot decide who is entitled, and so does not think proper to make it over at once to either claimant, he may refer the parties to the Civil Court, and retain the timber meanwhile. In either case the suit must be brought within two months: if not, under section 48, the timber will finally vest in Government, or in the person to whom the timber has been made over, as the case may be. If [the timber will vest in Government, the Forest Officer must take his own steps to ascertain the fact of a suit having been brought or not, before he takes possession of the timber.

Nothing is said in the Act about the Forest Officer arbitrating by consent of the parties<sup>2</sup>. There would be nothing to prevent their agreeing to his arbitration, and the best plan would be to proceed under section 523 of the Civil Procedure Code.

<sup>10</sup> I believe that such a difficulty did occur some years ago in Burma. While the Forest Officer was dealing with the timber under rules then in force, the Civil Court interfered, awarded the timber and took it under process of Court.

<sup>1</sup> Nor in a subsequent civil suit could a person appeal to the fact that the Forest Officer had made the timber over to him as a proof that in fact it belonged to him rather than to the other party. But the Forest Officer might be examined as a witness as to any technical or other knowledge he possessed, which might throw light on the question of ownership.

<sup>2</sup> In which case the ordinary law (see chapter on Civil Procedure) would apply. It is quite likely that if the Forest Officer is known to have experience, the parties will agree to abide by his arbitration.

The Forest Officer is, however, in no way responsible for this; all that he need see to is that the parties agree in writing to his arbitration, and he may give his decision, leaving it to them to pursue the steps necessary to enforce it. Nor would he be responsible if he made over the timber in accordance with such a decision, because the Act authorises him, in any case, to make it over to the party whom "he deems" entitled to it.

Nor is the Forest Officer liable for anything he does in good faith under the section, nor is Government liable for any loss that may happen during the detention of the timber. (Section 49 (B) 48, 79).

When timber is made over to a claimant, there will usually be a "salvage" fee (provided under rules made pursuant to section 51) due, and possibly other expenses also. No person can claim to take away his timber till he has paid these charges. But no expenses can be so charged (section 50), but such as are distinctly provided by the rules to be levied<sup>3</sup>.

If such fees and charges are not paid, sections 81 and 82 of the Act must be brought into play: the Forest Officer may sell the timber and recover the money due.

Offences against salvage drift timber rules are punished by such penalties as the rules themselves provide.

<sup>3</sup> "Salvage fees" consist of a sum which is purely in the nature of a reward for the risk and exertion undergone in saving the timber, whether by Government or private agency. 'Other expenses' will be the actual cost of moving, rafting, or storing timber, and may include a charge the object of which is to defray the cost of any special establishment necessarily entertained.